

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 LIVINGSTON HEARING AID CENTER,) Case No. 5:11-CV-01965 EJD
11 INC.,)
12 Plaintiff,) **ORDER GRANTING
13 v.) MODIFICATION OF SCHEDULING
14 INSOUND MEDICAL, INC.,) ORDER; GRANTING PLAINTIFF'S
15 Defendant.) MOTION FOR LEAVE TO FILE
16) FIRST AMENDED COMPLAINT**

17 Presently before the court is Livingston Hearing Aid Center's ("Plaintiff") motion for leave
18 to file first amended complaint, filed on January 26, 2012. See Docket Item No. 49. Having
19 reviewed the parties' submissions, the court finds this matter appropriate for decision without oral
20 argument pursuant to Civil Local Rule 7-1(b). Accordingly, the hearing scheduled for April 6,
21 2012 is VACATED.

22 Plaintiff originally filed its Complaint against InSound Medical ("Defendant") in Texas
23 state court. The action was removed to the Northern District of Texas on April 1, 2011, and
24 subsequently was transferred to this district on April 18, 2011. This court issued a Case
25 Management Order on October 24, 2011. See Docket Item No. 46. The deadline set by the court
26 for parties to seek leave to amend their pleadings was December 23, 2011. Id.

1 On December 16, 2011, Plaintiff sent Defendant their proposed first amended complaint.
2 Defendant informed Plaintiff on January 24, 2012 that it would not stipulate to the filing of the
3 proposed first amended complaint. Two days later, Plaintiff filed the instant motion.

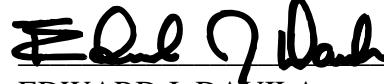
4 Under Federal Rule of Civil Procedure 15(a), which generally governs the amendment of
5 complaints, “[t]he court should freely give leave when justice so requires.” However, Rule
6 16(b)(4), which applies once a pretrial schedule has been set, requires that modifications to the
7 schedule may be made “only for good cause and with the judge’s consent.” See Johnson v.
8 Mammoth Recreations, Inc., 975 F.2d 604 (9th Cir. 1992). The court treats a motion for leave to
9 amend pleadings after the scheduling order deadline as a motion to modify the scheduling order.
10 See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000).

11 In determining whether good cause exists, courts consider “the diligence of the party
12 seeking the extension.” Johnson, 975 F.2d at 609. Unlike the cases relied upon by Defendant,
13 Plaintiff proposed a first amended complaint to Defendant before the deadline set in the Case
14 Management Order. Defendant waited over a month before notifying Plaintiff that it would not
15 stipulate to the filing of the proposed first amended complaint and Plaintiff filed the instant motion
16 two days later. Additionally, in the parties’ Joint Case Management Statement, Plaintiff noted that
17 it anticipated amending its pleadings to include California state and federal claims. See Docket
18 Item No. 45. This statement alerted Defendant and this court that Plaintiff intended to amend its
19 pleadings.

20 Accordingly, the court GRANTS a modification of the scheduling order and Plaintiff’s
21 motion for leave to file first amended complaint. Plaintiff shall file an amended complaint no later
22 than April 10, 2012.

23 **IT IS SO ORDERED.**

24 Dated: April 3, 2012

25 
26 EDWARD J. DAVILA
27 United States District Judge